Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of	)	CC Docket No. 96-98
1996	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	CC Docket No. 99-68
Intercarrier Compensation for ISP-Bound	)	
Traffic	)	WC Docket No. 04-36
	)	
IP-Enabled Services	)	
	)	

Reply Comments of The Nebraska Rural Independent Companies

Dated: December 22, 2008

The Nebraska Rural Independent Companies

Paul M. Schudel (No. 13723)
James A. Overcash (No. 18627)
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
(402) 437-8500
Their Attorneys

TABLE OF CONTENTS

SUMMARY

The Nebraska Rural Independent Telephone Companies ("Nebraska Companies") appreciate the opportunity to submit these reply comments regarding these critical issues. The Nebraska Companies focus their reply comments on five issues:

1. The reduction or elimination of intercarrier compensation and freezing of universal service support will impede and delay the deployment of broadband in rural areas. The Commission should reject policies that drastically reduce intercarrier compensation and freeze Universal Service support as indicated in the Proposed Orders. Additionally, the Commission should develop policies which require cost-based, middle-mile and IP backbone interconnection rates to allow rural LECs to provide its subscribers Internet access at affordable rates.

2. The Commission must respect state commissions' ratemaking authority:

3. The proper classification of IP/PSTN traffic as a telecommunications service will prevent traffic arbitrage activities that could materially harm the intercarrier compensation framework;

4. Incorporating the Section 251(g) access regime within the framework of Section 251(b)(5) is not proper from a legal, policy or market perspective; and

5. The Commission should immediately enact call signaling rules to resolve problems regarding carriers terminating traffic on local exchange carriers' networks without the proper information to allow carriers to properly bill for terminating calls.

The Nebraska Companies submit that the actions proposed in their comments and reply comments will help create certainty to both the intercarrier compensation regime

and the universal support system. This certainty will ultimately encourage robust development and deployment of broadband services in the areas served by rural LECs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of	)	CC Docket No. 96-98
1996	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	CC Docket No. 99-68
Intercarrier Compensation for ISP-Bound	)	
Traffic	)	WC Docket No. 04-36
	)	
IP-Enabled Services	)	
	)	

Reply Comments of The Nebraska Rural Independent Companies

I. Introduction.

The Nebraska Rural Independent Telephone Companies ("Nebraska Companies")[1] hereby submit these reply comments in the above-captioned proceeding.

[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

These reply comments are provided in response to comments filed to the Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, released on November 5, 2008 ("FNPRM") and the proposals attached as Appendices A and C ("Proposed Orders"). The Nebraska Companies will focus their reply comments on five issues:

1. The reduction or elimination of intercarrier compensation and freezing of universal service support will impede and delay the deployment of broadband in rural areas;

2. The Commission must respect state commissions' ratemaking authority;

3. The proper classification of IP/PSTN traffic will prevent traffic arbitrage activities that could materially harm the intercarrier compensation framework;

4. Incorporating the Section 251(g) access regime within the framework of Section 251(b)(5) is not proper from a legal, policy or market perspective; and

5. The Commission should immediately enact call signaling rules to resolve problems regarding carriers terminating traffic on local exchange carriers' networks without the proper information to allow carriers to properly bill for terminating calls.

The Nebraska Companies submit that the actions proposed in their comments and reply comments will help create certainty to both the intercarrier compensation regime and the universal support system. This certainty will ultimately encourage robust development and deployment of broadband services in the areas served by rural LECs.

II. The Record Overwhelmingly Shows that Reducing or Eliminating Intercarrier Compensation and Freezing Universal Service Funding Will Not Advance Broadband in Rural Areas.

The Commission's Proposed Orders would drastically reduce intercarrier compensation rates and the associated payments, and require mandated, and potentially unfunded, universal broadband deployment. Even though the Commission, in the Proposed Orders, purports to provide means for rate-of-return incumbent local exchange carriers to recover revenue losses caused by reductions to intercarrier compensation rates through universal service funding, such funding is based upon an incumbent LEC's ability to meet specific preconditions[2] and thus is inadequate to meet the LEC's obligation under the broadband build-out commitments contained in the Proposed Orders. The record contains an overwhelming response from industry associations, state public service commissions, rural local exchange carriers (rural LECs) and midsize carriers all presenting the conclusion that the realistic application of either of the Proposed Orders, taken in conjunction with the resulting reduced intercarrier compensation revenues and revisions to the high-cost universal service funding mechanisms, will not advance broadband in rural, high-cost areas.

Accordingly, the Nebraska Companies join the parties asserting that conditioning continued receipt of high-cost universal service support on a carrier's willingness or ability to commit to deploying broadband Internet service to all of the carrier's end-users will not bring affordable, high-quality broadband service to rural America.[3] In fact, as

---

[2] *See* Appendix A, para. 322; Appendix C, para. 321 of the FNPRM.

[3] *See* Comments of Frontier Communications at pp. 3-11; Comments of Independent Telephone & Telecommunications Alliance at p. 3; Comments of NASUCA at p. 24; Comments of Windstream at p. 48; Comments of Qwest at p. 35; Comments of Public Utility Commission of Ohio at p. 14; Comments of the Missouri Public Service Commission at pp. 9-10.

several parties observe in their comments, the Nebraska Companies concur that reducing intercarrier compensation rates and freezing universal service support will put a tremendous strain on a rural LEC's ability to invest in, maintain and operate its network infrastructure to the detriment of the rural consumer.[4] For example, the National Telecommunications Cooperative Association ("NTCA") recognizes that a "fundamental shift in compensation threatens the ability of rural carriers to build the necessary infrastructure to provide quality advanced and information services at just, reasonable and affordable rates."[5] Given the uncertainty of what could happen to the incumbent LECs' study areas at the end of the five-year time period in the Proposed Orders, if the broadband commitment is unmet, carriers are likely to "cease making further investment in rural telecommunications and broadband infrastructure."[6]

The National Association of State Utility Consumer Advocates, the Maine Office of Public Advocate, the Maryland Office of Peoples' Counsel, the Utility Reform Network, and the Utility Consumer Action Network (collectively, the "NASUCA" comments) assert that the "Chairman's Draft Proposal on broadband deployment will not serve the purpose of effectively expanding broadband availability and should not be

---

[4] *See* Comments of Washington Independent Telecommunications Association and Oregon Telecommunications Association at p. 15; Comments of NTCA at p. 25; Comments of NASUCA at pp. 26-27; Comments of Frontier at p. 2; Comments of Embarq at p. 2; Comments of Minnesota Independent Coalition at p. 3; Comments of Oklahoma Rural Telephone Coalition at p. 2-3; Comments of CenturyTel at p. 24; Comments of Washington Utilities and Transportation Commission at p. 6; Comments of Public Service Commission of Wisconsin at p. 3; Comments of Texas Statewide Telephone Cooperative, Inc. at pp. 5-6; Comments of Oklahoma Corporation Commission at p. 8; Comments of NECA at p. 14; Comments of Public Service Telephone Company, Inc., South Slope Cooperative Telephone Co., Inc., Venture Communications Cooperative, Townes Telecommunications, Inc. at p. 13; Comments of Windstream at p. 49.

[5] *See* Comments of NTCA at p. 25.

[6] *Id.*

adopted."[7] NASUCA notes that "the gaps in the Chairman's Draft Proposal virtually guarantee that the broadband needs of many rural customers. will not be met" as it "embodies the wrong approach (removing support if coverage is not achieved) and covers too few problem areas (only hitting carriers whose high-cost receipts are themselves high) to achieve the goals 'to spur deployment and ensure that all Americans have access to broadband.'"[8]

Embarq, in continuing this theme, noted "that the proposals as outlined in Appendices A, B and C ("the proposed order") would not only frustrate the expansion of broadband services, but would also place existing rural network integrity at risk and threaten to ultimately cripple or even bankrupt carriers serving rural areas."[9] Embarq argues that the Commission incorrectly concludes that "making an offering of broadband Internet access service a condition of receiving universal service high-cost support can bring this critical service to the remainder of Americans who await its deployment."[10] If, as Embarq contends, the "cost of complying with the mandate so greatly exceeds the benefit that it would be a breach of fiduciary duty for Embarq's management even to attempt to comply," then "the Commission will have failed in its efforts with regard to broadband and with regard to its obligation to create a sufficient mechanism to ensure the provision of the existing list of supported services."[11]

Other carriers, such as Windstream and Frontier, make identical arguments. Windstream states "[t]he significant amount of capital investment and ongoing

---

[7] See Comments of NASUCA at p. 24.
[8] *Id.* at pp. 26-27, citing in part Appendix A, para. 20; *See* Comments of Washington Utilities and Transportation Commission
[9] *See* Comments of Embarq at p. 2.
[10] *Id.* at p. 11-12, citing FNPRM at Appendix A, para. 23 and Appendix C, para. 23.
[11] *See* Comments of Embarq at p. 12.

operational expenses required to meet the commitment would far outweigh the amount of high-cost support it receives."[12] Windstream approximates that to meet the broadband build-out requirement, it would need to deploy broadband to almost 450,000 customers at a cost of $250 to $400 million; whereas, Windstream receives approximately $82 million in federal high-cost support for maintenance of existing services.[13]

Echoing this view, Frontier states that the Proposed Orders "virtually eliminate intercarrier compensation and freeze Universal Service high-cost support while including a five-year, 100% broadband build-out requirement" which will "put undue and irresponsible pressures on mid-size price cap ILECs and their customers."[14] Frontier argues that putting "high-cost support at risk by means of an unfunded mandate to deploy broadband service where it is not economical to do so could have a devastating impact not only on Frontier's customers' ability to access advanced services but on the economies of many of the very rural communities that rely on Frontier to provide them with services that are reasonably comparable in nature and price to the services available to consumers in the nation's most urban markets."[15] The Nebraska Companies join Windstream and Frontier in their concerns and emphasize that rural LECs and their customers will be equally harmed by the loss of intercarrier compensation revenue and universal service high-cost support.

As an illustrative example, the Oklahoma Corporation Commission ("OCC") estimates that 40-80% of the revenue for rural Oklahoma LECs is derived from access charges and the "proposed reduction in intrastate and interstate access rates will place a

---

[12] *See* Comments of Windstream at p. 49.
[13] *Id.*
[14] *Id.* at 3.
[15] *Id.*

heavy burden on rural LECs by slashing or eliminating a primary source of income."[16] The OCC urges the Commission to reconsider its unfunded mandate because "the investment required for broadband infrastructure capable of serving every customer will likely cause severe financial distress to many rural LECs."[17]

In its filing, the Texas Statewide Telephone Cooperative, Inc. ("TSTCI") astutely raises the point that "[i]f the current level of high-cost universal service support is sufficient for customers to obtain basic telecommunications service, how can that same level of funding be considered sufficient to deploy broadband access to all customers in a study area as well?"[18] Mandating broadband Internet access while proposing to freeze the level of high-cost support is "sure to have an adverse impact on future broadband investment" and "will hinder, not promote, broadband deployment in the rural areas."[19] The Missouri Public Service Commission concludes that the Commission's requirements are "not reasonable" as it is "mandating ubiquitous broadband deployment in some of the most costly areas of the country without consideration of costs, efficiencies or potential customer subscription rates."[20] The National Exchange Carrier Association ("NECA") concludes that "[s]tudy area-specific freezes on Universal Service support will, in effect, eliminate rate of return ("RoR") regulation and likely make it impossible for most RoR companies to commit to universal deployment goals or to acquire the necessary financing to meet broadband deployment commitments if made."[21]

[16] *See* Comments of Oklahoma Corporation Commission at p. 11.
[17] *Id.* at p. 8.
[18] *See* Comments of the Texas Statewide Telephone Cooperative, Inc. at p. 7.
[19] *Id.*
[20] *See* Comments of the Missouri Public Service Commission at pp. 9-10; Comments of the Texas Office of Public Utility Counsel
[21] *See* Comments of NECA at p. 14.

In its comments, NASUCA references a 2008 article from the Phoenix Center Policy Bulletin. Beard and Ford, the article's authors, wrote that "it is widely known that rural carriers have done a better job of bringing broadband to their customers than have the non-rural carriers (at least in the rural portions of the non-rural carriers' territories)."[22] Despite the progress rural and mid-size carriers are making in regard to broadband deployment in areas with low customer density, NASUCA fears that adoption of either of the Proposed Orders would result in a greater likelihood that consumers in both rural and non-rural areas would not receive broadband services. For example, "[i]n Ohio, there are customers in an AT&T exchange approximately 25 miles from the center of Columbus (the state capitol and largest city) where no broadband service is available, either from AT&T or from the cable provider."[23] If, in fact, the ultimate goal of the Commission is universal broadband deployment, the Commission should conclude that drastically reducing the rural LECs' revenue streams and threatening carriers with the loss of universal service support is *not* the most effective means of achieving this goal.

Several commentators address the issue of the Commission conditioning receipt of high-cost universal service support on the provision of broadband, a service that is not yet even defined as a supported service. Embarq notes that the "incongruity of this requirement is obvious" since "current support amounts are insufficient for the existing list of supported services, they can only be more insufficient when additional services are added to the list."[24] Furthermore, Embarq finds that it "is all the more remarkable given that the Commission has not determined that broadband is to be classified as a supported

---

[22] *See* Comments of NASUCA, Footnote 108 (citing http://www/insight-corp.com/reports/rural.asp).

[23] *Id.* at footnote 109.

[24] *See* Comments of Embarq at p. 10.

service under Section 254."[25] Other parties recognize the inappropriateness of reducing or limiting support while mandating deployment of broadband when it has not been a supported service,[26] a conclusion with which the Nebraska Companies strongly concur.

Correspondingly, some commentators discuss the need for universal service support to cover the backbone and middle-mile expenses necessary for rural LECs to connect their customers to the IP network. In its initial comments, NECA suggests that "[i]n order to accomplish universal availability of broadband Internet access service, it may also be necessary to consider mechanisms to help recover the high costs of obtaining transport to the Internet backbone from rural areas" as "current support mechanisms do not cover these costs, which often make it impossible for rural providers to offer economically-priced high-speed access in rural areas."[27] Further, NECA conveys that the "pricing structures for interconnection of broadband packet networks require small rural carriers to pay large carriers to interconnect to IP backbones" and these "costs must then be recovered from rural customers."[28] TSTCI also recommends that in addition to including broadband on the list of supported services, the Commission should include the "associated expenses to access backbone providers and provide the additional support needed for high-cost areas."[29] At the very least, as NTCA advises, "the Commission should investigate the costs associated with middle-mile and Internet backbone services

---

[25] *Id.*

[26] *See* Comments of Public Service Commission of Wisconsin at p. 3; Comments of TSTCI at p 7; Comments of Public Service Telephone Company, Inc., South Slope Cooperative Telephone Co., Inc., Townes Telecommunications, Inc. and Venture Communications Cooperative at p. 13; Comments of NTCA at p. 24; Comments of NECA at pp. 15-16.

[27] *See* Comments of NECA at pp. 15-16.

[28] *Id.* at p. 29.

[29] *See* Comments of TSTCI at p. 10.

for small ISPs providing service in rural areas and consider implications for access to advanced information services."[30]

Since middle-mile and IP backbone interconnection are deregulated services, rural LECs, which are limited in their choice of an IP backbone provider, have no option but to pay what that provider charges in order to provide Internet service to their customers. By including middle-mile and IP backbone service in the definition of broadband Internet access service, the Commission gains the authority to oversee the prices charged to LECs for these essential services and to monitor IP backbone providers which may be abusing their market power.

The Nebraska Companies reinforce these positions and ask that the Commission take into account the considerable expense rural LECs incur in providing Internet service to their customers in high-cost and rural areas. Including broadband Internet access service as a supported service would allow the aforementioned costs to be recovered through a support mechanism.

III. State Commissions Properly Warn That the FCC Cannot Exceed its Authority Regarding Intrastate Rates.

In the Proposed Orders, terminating intrastate access intercarrier compensation would convert to terminating-only interstate access rates and structure at the end of the second year of the transition,[31] and then ultimately to a statewide terminating rate to be

[30] *See* Comments of NTCA at p. 26.

[31] The Nebraska Companies are of the belief that since all intercarrier compensation reverts to the reciprocal compensation rates and structure, this necessarily means that originating compensation would cease after the two years of either order since no originating access will exist. At a minimum, the orders are unclear on how originating compensation can exist under a Section 251(b)(5) terminating regime.

established in state proceedings.[32] State commissions have properly cautioned the Commission that either Proposed Order oversteps the boundaries of federal authority. The National Association of Regulatory Utility Commissioners ("NARUC") first broadly notes that both Proposed Orders "virtually rewrite key sections of the Statute – overriding literally decades of case law, ignoring express reservations of State authority, and redefining statutory terms in a manner that Congress could have never intended."[33] Specifically, in the matter of prescribed rate-setting, the new methodology contained in the Proposed Orders results in per-minute rates of $0.0007 or lower. NARUC describes such prescription as an attempt to "unlawfully constrain" state authority by preempting intrastate access charges, "building on the flawed legal rationale of the *Core* Remand order …"[34] and restricting "States' ability to set intrastate rates based solely upon State-determined reasonable costs of service."[35]

Numerous commenting state commissions echo NARUC's position in opposition to the Commission's preemption,[36] or recommend that states should maintain flexibility

[32] *See* Appendix A and Appendix C, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, and WC Docket No. 04-36 (rel. Nov. 5, 2008).
[33] *See* NARUC Comments at p. 4.
[34] *Id.*
[35] *Id.* at p. 11.
[36] *See* Comments of Massachusetts Department of Telecommunications and Cable at p. 7-8; Washington Utilities and Transportation Commission at pp. 4-5; Wyoming Public Service Commission at p. 1; Pennsylvania Public Utility Commission at pp. 20, 27; Delaware, Pennsylvania, New Jersey and District of Columbia ("The State Regulatory Commissions and District of Columbia") at p. 2; Texas Office of Public Utility Counsel at p. 2; Public Utilities Commission of Ohio at p. 2; Michigan Public Service Commission at p. 10; Virginia State Corporation Commission at p. 3.

in determining rates for carriers in their states.[37] For example, the Massachusetts Department of Telecommunications and Cable ("MDTC") notes in its comments that "[b]y predetermining that the incremental cost of call termination on modern networks is *de minimis*, expecting that caps will not exceed $.0007 and determining that an actual $.0007 cap is 'not currently warranted,' the Alternate Reform Proposal does, in fact, improperly establish a rate-setting activity by the FCC, specifically, over intrastate rates and will be subject to numerous legal challenges."[38] Consequently, the Commission will encounter challenges from the states if it were to attempt to issue an order containing the statewide mandatory pricing, and the Nebraska Companies believe it would be wise to avoid those time-consuming and unnecessary legal challenges.

Rather than preempting the states, in their Joint Statement accompanying the FNPRM, the four Commissioners observe that there is 'a growing measure of consensus' on a number of issues including moving intrastate access rates to interstate levels "over a reasonable period of time. . . ."[39] By issuing the Joint Statement, the four Commissioners appear to acknowledge the existence of some potential preemption issues contained in the Proposed Orders, and in an effort to overcome those issues, the Commissioners recommend taking an approach on which there is accord in the industry. Among the parties that support this recommendation are the Nebraska Public Service Commission ("NPSC"),[40]NECA,[41] and the NTCA.[42] NECA and NTCA, in fact, propose capping or

[37] *See* Comments of California Public Utilities Commission at p. 17; Ohio Commission, generally at pp. 5-17.
[38] *See* Comments of Massachusetts Department of Telecommunications and Cable at p. 17.
[39] *See* Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell, FCC 08-262, November 5, 2008.
[40] *See* Comments of Nebraska Public Service Commission at p. 5.
[41] *See* Comments of National Exchange Carrier Association at pp. 4-5.

freezing of interstate rates, then reducing intrastate rates on a voluntary basis. The Nebraska Companies would support the Commission taking this important and lawful step, if proper cost recovery from supplemental support as recommended by NECA and NTCA is also implemented. The Joint Statement also appears to properly recognize consensus on that front.[43]

Finally, the Nebraska Companies wish to make note of the record of comments on the questions raised in the FNPRM regarding the potential application of TELRIC or another cost standard to all intercarrier compensation rates, and whether such rates should be set by company or statewide.[44] Among parties that actually deploy networks – especially small and mid-size carriers – the vast majority of comments support maintaining rates by carrier and not moving all rates, at this time, to TELRIC or any "additional cost" standard.

Additionally, several state commissions oppose application of any additional cost standard to all rates – including intrastate access.[45] The PSCW asserts that "nothing allows the Commission to require a determination of a single, statewide rate for reciprocal compensation and, in fact, rates must be determined separately for each carrier" as the "terms and conditions for reciprocal compensation must provide for 'the mutual and reciprocal recovery by each carrier of costs associated with transport and termination.'"[46] The Texas Office of Public Counsel ("TOPC") "does not believe the 'additional costs' standard is appropriate for determination of intercarrier compensation

---

[42] *See* Comments of National Telecommunications Cooperative Association at pp. 7-9.
[43] *See* Joint Statement of Commissioners Copps, Adelstein, Taylor Tate and McDowell.
[44] *See* FNPRM, para. 41.
[45] *See* Comments of Public Service Commission of Wisconsin at p. 5; Washington Commission at pp. 7-8.; Pennsylvania Commission at pp. 221-29; Texas Commission at pp. 3-4; and Michigan Commission at pp. 8, 10.

rates" and that "a single, statewide rate for all terminating traffic is inappropriate since these costs necessarily vary on a carrier-by-carrier basis."[47] In its comments, the NPSC maintains that the Commission "should not adopt the new 'additional costs' methodology it proposes to use for pricing intercarrier compensation, as this methodology would not allow for sufficient cost recovery over the long run..."[48] The Pennsylvania Public Utility Commission ("PaPUC") concludes that the "FCC's proposed 'new' incremental cost standard will also lead to an inequitable shifting of joint and common costs of carrier access to end-user consumers of telecommunications services" and that "proposed increases to the federal SLCs in combination with the adoption of the incremental cost standard, will lead to the inequitable shifting of the responsibility for the cost recovery of access network joint and common costs to the end-users of telecommunications services."[49] For these reasons, the PaPUC rejects the "application of the incremental cost standard for the derivation of costs and prices of intrastate regulated telecommunications services."[50]

Although there is recognition that in the future moving rates to a unified level by carrier may ultimately be beneficial, the Nebraska Companies support the conclusion reached by several parties that far more study needs to occur before such a step may properly be taken.[51]

---

[46] *See* Comments of Public Service Commission of Wisconsin at p. 7.
[47] *See* Comments of the Texas Office of Public Counsel at pp.3-4.
[48] *See* Comments of the Nebraska Public Service Commission at p. 6-7.

[49] *See* Comments of the Pennsylvania Public Utility Commission at p. 25.
[50] *Id.* at p. 28.
[51] *See,* for example, NTCA Comments at pp. 39-42.

IV. The Record Indicates that the FCC Should Reject Classifying IP/PSTN Traffic/Exchange as an Information Service Because this Classification Would Cause Arbitrage Activity That Will Severely Damage the Stability of the Network Infrastructure in Rural Markets.

In their initial comments, the Nebraska Companies urged the Commission to declare the exchange of traffic between IP network platforms and the PSTN network platforms to be a telecommunications service and subject to the appropriate compensation regime (either 251(g) or 251(b)(5)) and to reject the arguments in the Proposed Orders that IP/PSTN services should be classified as an information service. This classification would cause the exchange of IP/PSTN traffic to be ultimately regulated (after the transition) under Section 251(b)(5).[52] The Nebraska Companies also previously raised a technical point of confusion apparent in the Proposed Orders with respect to the difference between end-to-end service classification and the particular question of traffic exchange between network platforms utilizing different technologies – that is, the actual exchange of traffic between IP and PSTN platforms is circuit switched/TDM, and therefore, a telecommunications service. In their initial filing, the Nebraska Companies also raised the specter of dire consequences related to the transition period and "status quo" proposed in the Proposed Orders where IP/PSTN would fall into a regulatory "no-mans land" until the final intercarrier compensation categorization would fall under Section 251(b)(5).[53]

The Nebraska Companies offer an assessment that it appears that larger corporate entities favoring an information service classification do so because the position serves their financial interests -- and not the public interest in support of a broadband infrastructure -- by classifying IP traffic exchanged with the PSTN and VoIP traffic

[52] *See* Comments of the Nebraska Rural Independent Companies at pp.21-22.

exchanged with the PSTN as an "information service."[54] Even AT&T, although supporting the classification of VoIP as an information service,[55] argues that the Proposed Orders leave unanswered basic questions about termination rates for IP/PSTN traffic during the transition and asserts that all interexchange IP/PSTN traffic should be treated as access traffic during the transition. AT&T, by such a position statement, appears to believe that even services determined to be information services under the Proposed Orders would subject to access charges for another 10 years.[56] AT&T has separated the question of classification (information or telecommunications service) from the question of financial obligation under either Section 251(g) or Section 251(b)(5) thus allowing for the appropriate intercarrier compensation categorization. The United States Telecom Association ("USTA") appears to agree with this assessment.[57]

On the other hand, a large number of diverse commentators strongly oppose the classification of IP/PSTN services and the exchange of traffic between IP and PSTN platforms as "information services" both on policy and technical grounds. For example, NASUCA argues that the conclusion to bring information services under the authority of Section 251(b)(5), as determined in the Proposed Orders, may not be strong enough to withstand appeal and asserts IP/PSTN services should not be classified as "information services".[58] NASUCA argues, correctly, that protocol conversions are part and parcel of any telecommunications network, contending that protocol conversions for the management, control or operation of a telecommunications service are necessary

---

[53] *Id.* at p. 20.
[54] *See* Comments of Verizon and Comcast.
[55] *See* Comments of AT&T Comments at p. 5.
[56] *Id.* at pp. 5-6.

[57] *See* Comments of USTA at p. 8.

components of the provision of telecommunications services. These conversions do not change telecommunications services into information services. As the Nebraska Companies pointed out, no protocol conversion takes place from the perspective of the point in the network where traffic is actually exchanged. At that point, the traffic is exchanged as circuit switched/TDM traffic.

NARUC argues that there is no net protocol conversion from the final input to the final output of the IP/PSTN service in question and that from the end user perspective providers of fixed VoIP services are indistinguishable from their PSTN brethren.[59] Also, NARUC argues that VoIP providers interface with the PSTN just as do all other carriers. This again is consistent with the Nebraska Companies position that traffic at the exchange point is circuit switched/TDM and a telecommunications service. NARUC provides additional support to its argument by noting that taken together, the telecommunications service definition in Section 153(46) and the new technology and service policy in Section 157 are agnostic to which type of technology utilized with respect to the proper classification of service. The fact that any service uses IP technology rather than some other technology to deliver its voice telecommunications service is immaterial to the classification of the service.

The positions of several state commissions are consistent with NARUC. For example, the PaPUC correctly concludes that the Commission's reliance on the court decisions in *pulver.com* and *Vonage* as justification for its classification determination is flawed.[60] The *pulver.com* decision only applies to services (directory) that were offered

---

[58] *See* Comments of NASUCA at p. 9.
[59] *See* Comments of NARUC at p. 13.

[60] *See* Comments of Pennsylvania Public Utility Commission at p. 32.

to the public for free and did not involve the PSTN. The *Vonage* decision specifically dealt with nomadic "over the top" VoIP and not the private IP managed network landline sort of VoIP offered by some cable companies. The PSCW also argues that any advancement of a technological distinction within voice communications impairs the Act's objective of both technological and competitive neutrality.[61]

Further, the artificial distinction for IP/PSTN is likely to increase confusion for consumers about their rights and remedies. The California Public Utilities Commission ("CPUC") opposes the classification of IP/PSTN services as information services on the basis that such classification has potential effects not addressed by the Proposed Orders.[62] The CPUC argues that such classification would cast in doubt a host of federal and state regulations pertaining to public safety, telecommunications relay services requirements, universal service contributions, regulatory fees, law enforcement, consumer protection, and number portability. Further, this classification would raise questions about whether telecommunications providers could lawfully deny interconnection to VoIP or IP-enabled service providers. All of the potential negative outcomes suggested by state commissions demonstrate that the classification of IP/PSTN services as information services is incongruous with the public interest and would have unintended consequences.

Meanwhile, Embarq suggests that it would be a mistake to assume that IP/PSTN traffic involves a net protocol conversion.[63] As with NARUC, Embarq correctly observes that there is indeed no net-protocol conversion between end-users involved in VoIP-IP/PSTN calls. Embarq also observes that the Commission has previously found that

---

[61] *See* Comments of the Public Service Commission of Wisconsin at p. 10.

[62] *See* Comments of the California Public Utilities Commission and the People of California at pp. 4-8.

routing calls through a gateway that converts to or from IP format is "internetworking," and thus a telecommunications service. CenturyTel argues that the FCC should end the free ride on ILEC networks for IP-enabled services and should treat such services as telecommunications services for the purpose of intercarrier compensation.[64] CenturyTel asserts that any other conclusion would be not only discriminatory, but would skew competition for voice telephony to the advantage of the VoIP provider.

NECA suggests that the Commission's conclusion on the classification of IP/PSTN traffic would seemingly permit service providers to claim that their traffic is exempt from access charges under the "ESP exemption."[65] At the same time, NECA points out that the Proposed Orders state that the "status quo" continues to apply to a call using VoIP technology. NECA concludes it is, therefore, unclear whether interconnected, interexchange VoIP calls, which use the PSTN network in the same way as traditional long-distance telephone calls, will be required to pay access charges, reciprocal compensation, or no charges at all in the transition.

Based on the overwhelming evidence on the record and to ensure the public interest is served, the Nebraska Companies urge that the Commission should discard the classification conclusions in the Proposed Orders, declare that IP/PSTN traffic exchange is a telecommunications service and clarify that such traffic is subject to the appropriate intercarrier compensation regime (Section 251(g) or Section 251(b)(5)) based on whether the traffic is interexchange or local exchange traffic.

---

[63] *See* Comments of Embarq at p. 35.
[64] *See* Comments of CenturyTel at pp. 26-28.
[65] *See* Comments of the National Exchange Carrier Association at p. 11.

V. The Commission Should Not Move Exchange Access Traffic into the Section 251(b)(5) Reciprocal Compensation Regime.

Consistent with the Nebraska Companies' initial comments, there is no rationale provided in the Comments filed in this proceeding that justify moving exchange access traffic into the reciprocal compensation regime of Section 251(b)(5). Although the Proposed Orders conclude that Section 251(b)(5) is not limited strictly to the transport and termination of certain types of telecommunications traffic, such as local traffic, neither the comments submitted in this proceeding nor either Proposed Order explains why or how incorporating the Section 251(g) access regime within the framework of Section 251(b)(5) is the proper policy, market, or legal conclusion.

The Nebraska Companies agree with the comments filed by Broadview Networks that Section 251(b)(5) applies only between two carriers reciprocally exchanging telecommunications traffic. Interexchange carriers and local exchange carriers do not exchange traffic in any way recognized by the Commission that would cause an IXC and a LEC to compensate the other reciprocally.[66] Further, in contrast to the reciprocal compensation arrangements of Section 251(b)(5), the local exchange carrier has always charged the interexchange carrier for access regardless of the direction of the traffic. There is nothing reciprocal about the access charge regime.[67]

The Nebraska Companies concur with NARUC that expanding Section 251(b)(5) to encompass access and, in particular state access, will cause a cascading series of implementation problems for many states.[68] The Commission need not look any further

[66] *See* Comments of Broadview Networks, Inc., Cavalier Telephone, NuVox, and XO Communications, LLC at p. 28.
[67] *Id.* at p. 28.
[68] *See* Comments of NARUC at p. 11.

than the Comments filed by the Nebraska Companies in this proceeding for a list of such problems.[69]

The Commission's action in response to the District of Columbia Circuit Court's mandate in the *Core* case[70] (*i.e.* holding that ISP-bound traffic falls within the scope of 251(b)(5)) need not lead to the additional, and unrelated, action of moving exchange access traffic within the scope of Section 251(b)(5). As correctly observed by NARUC, the Commission should resolve the broader range of issues on intercarrier compensation, including any consideration of moving section exchange access traffic into Section 251(b)(5), through a new Notice of Proposed Rulemaking.[71] The Nebraska Companies again recommend that the Commission should not adopt actions that in effect "prejudge" the market conditions for exchange access. Further, the Commission should not fall into the misguided legal trap of arguments that link a solution for the *Core* case to elimination of the exchange access regime and the assimilation of Section 251(g) under the Section 251(b)(5) umbrella. The services that fall under the two compensation regimes are for different purposes and until traditional long distance service becomes completely obsolete, which is far from the case in today's market, Section 251(g) and exchange access services should be maintained.

VI. There is Widespread Support for Solutions that Will Address Phantom Traffic; Those Solutions Should be Acted Upon Immediately.

The Proposed Orders properly address measures needed to ensure proper billing as a component of comprehensive intercarrier compensation reform. The Proposed Orders amend Commission rules to ensure the ability of service providers to receive the

[69] *See* Comments of the Nebraska Companies at pp. 9-12.
[70] *See Core Communications, Inc. v. FCC*, 531 F.3d 849 (D.C. Cir. 2008).
[71] *Id.* at footnote 32.

appropriate compensation for traffic terminated on their networks. Specifically, the amended rules would require all service providers to populate Calling Party Number information in the SS7 call signaling stream and to prohibit service providers from stripping or altering this information. The Nebraska Companies agree that incorporating these practices into the Commission rules will facilitate resolution of billing disputes and will provide incentives to help prevent manipulation or deletion of information from signaling streams and will provide inventive for service providers to ensure that traffic traversing their networks is properly labeled and identified.

The Nebraska Companies concur with NECA that the new rules will greatly assist rural carriers in billing and collecting lawful termination charges for traffic that has been terminated essentially free-of-charge.[72] The Nebraska Companies particularly agree with the Washington Independent Telecommunications Association ("WITA") and the Oregon Telecommunications Association ("OTA") on the application of the rules to all interconnected voice service providers regardless of the technology used.[73]

Given the broad consensus of the parties commenting in this proceeding that support incorporation of the aforementioned practices into the Commission rules, the Nebraska Companies agree with the NPSC that such an action can be done immediately, without broad intercarrier compensation reform measures.[74]

VII. Conclusion.

As set forth in comments filed with the Commission on November 26, 2008, the Nebraska Companies continue to urge the Commission to reject the Proposed Orders. In

[72] *See* Comments of NECA at p. 9.
[73] *See* Comments of WITA and OTA at p. 9.
[74] *See* Comments of the Nebraska Public Service Commission at p. 21.

addition to the actions recommended by the Nebraska Companies in their filed comments, the Nebraska Companies, in these reply comments, recommend that the FCC:

1. Develop a Universal Service Fund policy that will strongly encourage the deployment of broadband in areas served by rural LECs and reject policies that drastically reduce intercarrier compensation and freeze Universal Service support as indicated in the Proposed Orders.
2. Develop policies which require cost-based, middle-mile and IP backbone interconnection rates to allow rural LECs to provide its subscribers Internet access at affordable rates.
3. Maintain policies which uphold state commissions' authority over state intercarrier compensation rates.
4. Issue a finding that IP/PSTN traffic exchange is a telecommunications service and subject to intercarrier compensation.
5. Conclude that the Commission's previous finding regarding ISP-bound traffic does not warrant a finding that interstate and intrastate exchange access traffic should be regulated pursuant to Section 251(b)(5).
6. Adopt call signaling rules that will prohibit carriers from terminating traffic without the proper information to allow carriers to properly bill for terminating calls.

The Nebraska Companies submit that their proposed recommended actions as set forth in both their initial comments and these reply comments will maintain certainty and stability in the intercarrier compensation system while advancing broadband deployment in rural, high-cost areas without risking the long-term viability of universal service on which rural carriers and their subscribers depend.

Dated: December 22, 2008.

THE NEBRASKA RURAL INDEPENDENT COMPANIES

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Co.,
K. & M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

By: ____________________

Paul M. Schudel (No. 13723)
James A. Overcash (No. 18627)
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
(402) 437-8500
THEIR ATTORNEYS